

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Cellular South License, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	DA 02-3317
)	
RCC Holdings, Inc.)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
Throughout its Licensed Service Area)	
In the State of Alabama)	DA 02-3181
)	
Application for Review of the)	
Alabama Rural Local Exchange Carriers)	CC Docket 96-45

Comments of TCA

I. Introduction

TCA, Inc. - Telcom Consulting Associates (“TCA”) hereby submits these comments in response to the Public Notice issued in the proceedings as captioned above.

On November 27 and December 4, 2002, the Wireline Competition Bureau (the “Bureau”) issued decisions granting Eligible Telecommunications Carrier (“ETC”) status to RCC Holdings, Inc. (“RCC”) and Cellular South License, Inc. (“Cellular South” and collectively (the “wireless carriers”), respectively.¹ The rural ILECs provisioning service within Alabama

¹ See *Memorandum Opinion and Order, In the Matter of RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, rel. November 27, 2002 (“RCC Order”) and *Memorandum Opinion and Order, In the Matter of Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its*

and affected by these decisions brought Applications for Review before the full Commission.² TCA supports the Applications for Review and requests that the Commission suspend the wireless carriers' Orders.

TCA is a management consulting firm providing financial, regulatory, management and marketing services for over fifty small, rural local exchange carriers ("LECs") throughout the United States, including the state of Alabama. TCA's clients derive a significant portion of their revenues from universal service support mechanisms and therefore will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's clients.

II. The Commission Should Suspend the Decisions of the Bureau Until It May Act on the Joint Board's Recommendation.

On November 7, 2002, the Commission adopted an Order requesting the Federal-State Joint Board on Universal Service (the "Joint Board") "to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure the *dual goals* of preserving universal service and fostering competition continue to be fulfilled."³ Specifically, the Joint Board is developing a "complete record" regarding competition in high-cost areas, the "effect of the Commission's current policies," including the process of designating ETCs, on such competition and "how line-growth in high-cost areas may impact the universal service fund."⁴ Additionally, the Joint Board is requesting comment regarding the calculation of support in competitive study areas⁵ and the scope of such support.⁶ Most significant to the instant proceeding, the Joint Board asks "[d]oes providing universal service support to multiple ETCs in

Licensed Service Area in the State of Alabama, CC Docket No. 96-45, DA 02-3317, re;. December 4, 2002 ("Cellular South Order") (collectively, "wireless carriers' Orders").

² See Application for Review of the Alabama Rural Local Exchange Carriers, CC Docket No. 96-45, DA 02-746, DA 02-3181, filed December 23, 2002 and Application for Review of the Alabama Rural Local Exchange Carriers, CC Docket No. 96-45, DA 02-1465, DA 02-3317, filed December 30, 2002.

³ See Order, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307, Adopted November 7, 2002, ¶1(emphasis added) (the "Joint Board Order").

⁴ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1, rel. February 7, 2003, ¶ 9 (the "Joint Board PN").

⁵ Joint Board PN, ¶15.

⁶ Joint Board PN, ¶26.

high-cost areas result in inefficient competition and impose greater costs on the universal service fund?”⁷

The wireless carriers’ Orders acknowledge the request to the Joint Board, however, the Bureau dismisses the request and any resulting recommendation with almost identical language.

We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which *designates a particular carrier as an ETC*.⁸

In not considering the impact of its decisions on the high-cost fund, including its decision to redefine service areas so that the wireless carriers may receive federal universal service support, nor providing a specific explanation as to why it was ignoring the potential future recommendation of the Joint Board, the Bureau violates the Universal Service Order⁹ on which it bases much of the wireless carriers’ Orders.

In designating Cellular South and RCC as ETC, the Bureau clearly considers redefining the qualifying service areas of each as part of the ETC designation process.¹⁰ Established by Congress in Section 214 of the Telecommunications Act (the “Act”), the redefinition of study areas must take into account the recommendations of the Joint Board.¹¹ The Commission further develops the importance of the Joint Board in this process when it plainly states in the Universal Service Order:

In addition, we conclude that the language “taking into account” indicates that the Commission and the states must each give full consideration to the Joint Board’s recommendation and must each explain why they are not adopting the recommendation included in the most recent

⁷ Joint Board PN, ¶16.

⁸ Cellular South Order, ¶32 (emphasis added). *See also*, RCC Order, ¶32.

⁹ *See Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776 (“Universal Service Order”).

¹⁰ RCC Order, ¶34 (“...[W]e will redefine that rural telephone company’s service area for purposes of ETC designation...”); *See also* Cellular South Order, ¶36 (“Redefining Rural Telephone Company Service Areas for Purposes of ETC Designation”).

¹¹ 47 U.S.C. §214(e)(5).

*Recommended Decision or the recommendations of any future Joint Board convened to provide recommendations with respect to federal universal service support mechanisms.*¹²

When implementing Section 214(e)(5), the Commission recognized that due to federal universal service support for rural LECs being calculated using the company's embedded costs averaged over its entire study area, regulatory consistency requires a rural LEC's service territory to equal its study area.¹³ Since the issuance of the Universal Service Order in 1997, the Commission affirmed in 2001 the method of calculating the cost of providing universal service in areas served by rural LECs.¹⁴

Accordingly, eliminating the link between a service territory and study areas of a rural LEC must only occur after careful deliberation of the full impact of the policy decision. By the Commission's Order, this deliberation *must* include all precedents, including any Recommended Decisions from the Joint Board and current deliberations of the Joint Board. Therefore, the Commission must suspend the ETC designations made in this proceeding, and all accompanying mandates, including the redefinition of service areas, until the Commission may consider the Recommended Decision of the Joint Board regarding the ETC designation process.

II. The Size of the Federal Universal Service Fund is Germane to the Interests of the Public.

The Bureau correctly points out that when considering ETC status for a rural service area, the Act mandates that an analysis of the public interest must be made.¹⁵ RCC notes that the

¹² Universal Service Order, ¶187 (emphasis added).

¹³ Universal Service Order, ¶189. While the FCC did recognize that under certain circumstances, rural LEC study area redefinition may be appropriate, the Universal Service Order stated that the redefinition be limited to non-contiguous sections of a rural study area. This limitation would still largely eliminate barriers to competitive entry, but not further compromise the service areas of small rural LECs. Universal Service Order, ¶129.

¹⁴ See *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, FCC 01-157, rel. May 23, 2001, ¶37.

¹⁵ 47 U.S.C. §214(e)(6).

public interest standard “emphasizes competition *and* consumer benefit...”¹⁶ RCC continues by properly stating that absent support from the high-cost fund, “it is doubtful that many rural areas would have wireline telephone service even today.”¹⁷ In this light, providing consumer benefit through the federal high-cost fund, the Bureau stated that granting ETC status to both Cellular South and RCC is indeed in the public interest.¹⁸

The Bureau also stated, however, noting concerns that were raised by the affected Alabama RLECs and others, that while the projected unsustainable size of the universal service fund was an important issue, it was “beyond the scope of this Order.”¹⁹ As noted above, the Bureau will wait for the decision of the Joint Board, but will proceed in these two cases. TCA respectfully submits that the size of the federal universal service fund is both in the American public’s interest and in the interest of the citizens of Alabama.

For over seventy years, universal service – affordable access for all Americans to a ubiquitous, high-quality network - has served as the cornerstone of national and state telecommunications policy. Today, universal service is at a crossroads, as the continued viability of these very support mechanisms is at peril. This threat to universal service is the misuse of scarce universal service funds by the Bureau and various state commissions in an effort to incent “competition” in some of the most sparsely populated and high cost areas of the country. Many state commissions (in conjunction with the Bureau) are providing wireless providers unfettered access to the universal service fund without “burdening” them with even the slightest obligation of actually providing true universal service.

In the late 1990s up to today, wireless providers began pursuing access to universal service support mechanisms by promising to offer a fixed wireless service designed to utilize its existing cellular network which would compete with wireline LEC providers. Instead of thoughtful consideration of the public interest requirement, including an analysis of the costs and

¹⁶ See Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, filed March 19, 2002, page 15 (emphasis added) (the “RCC Petition”).

¹⁷ RCC Petition, page 16.

¹⁸ Cellular South Order, ¶28; RCC Order, ¶22.

¹⁹ Cellular South Order, ¶32; See also RCC Order, ¶32.

benefits, as mandated by Congress, the Commission and many state commissions seem satisfied to accept the vague assertions of the wireless providers that competition is always in the public interest.

Wireless ETCs have successfully embarked on an unprecedented grab for federal and state support. Federal support received by wireless ETCs has ballooned from \$500,000 in 1999 to a projection of more than \$100 million in 2003.²⁰ However, this massive increase is only the beginning. OPASTCO has estimated that if all wireless providers nationwide were granted ETC status (a likely scenario considering the competitive nature of the wireless market) the annual funding requirements of the federal high cost support mechanisms would increase by \$2 billion.²¹ Such an increase would surely result in the collapse of federal universal service support mechanisms.

Federal universal service support mechanisms are beginning to show signs of strain of ever-spiraling growth, primarily attributable to the uncapped support available to competitive ETCs.²² Federal funds are supported by an assessment (currently 7.3%) on end user interstate revenues. During 2002, the FCC determined an increase in the assessment rate would be required to 8.7% and 9.3%, for the third and fourth quarters, respectively. The FCC, recognizing that an assessment level of this magnitude would be objectionable to contributors, took unprecedented action and transferred monies from Schools and Libraries Fund to the High Cost Fund to maintain the contribution level of 7.3% for the latter half of 2002.²³

The size of the universal service fund, which equates to the financial burden imposed on contributors, must be equally measured against any advantage gained from competition. Both Commissioners Martin and Adelstein have raised serious reservations regarding the payoffs of

²⁰ 1Q:2003 USAC Projections (annualized) See: <http://www.usac.org>. See also Joint Board Order, ¶4, citing an increase in support received by competitive ETCs.

²¹ See Letter from Jeffery Smith, OPASTCO, to Marlene Dortch, Docket No. 96-45 (filed January 28, 2003) attaching *Universal Service in America: A Congressional Mandate At Risk*, January 2003, page 21 ("OPASTCO USF Ex Parte").

²² Federal support mechanisms available to LECs, unlike competitive ETCs, are subject to various caps to limit growth in order to prevent the funds from burdening to contributors.

²³ See *Proposed Fourth Quarter 2002 Universal Service Contribution Factor*, Public Notice, DA 02-1409, rel. September 10, 2002.

using the federal universal service fund to incent competition. Commissioner Martin, during consideration of the MAG Plan, wrote that “[t]his policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment *and a ballooning universal service fund*.”²⁴

Commissioner Adelstein recently stated that “[w]e must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers.”²⁵

When the Bureau writes that “[b]ased on the record before us, we conclude that grant of this ETC designation is consistent with the public interest,”²⁶ one should be able to assume that the Bureau has considered the public interest, especially that of Alabama citizens. However, in light of the publicly-filed complaints of citizens of Alabama in Docket No. 96-45 regarding a proposed increase in the universal service contribution fee, one must ask if these expressions of the public interest were indeed considered.

For example, a search of the publicly-filed comments on the Commission’s website finds 68 “Universal Service Fund Complaints” filed by citizens of Alabama.²⁷ In largely similar words, these Alabama residents express frustration over a proposed universal service fund contribution fee increase to \$1.00 per month for all wireless phones. All of the comments state that this increase “will directly impact my ability to retain my wireless service.”²⁸ Lisa Beaman of Jemison, Alabama, finds the proposed increase to be “unfair and unreasonable...”²⁹ James Grimes of Birmingham, Alabama simply desires assurance that the Commission is “doing your

²⁴ Separate Statement of Commissioner Kevin J. Martin, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, rel. November 8, 2001. (“MAG Order”)

²⁵ Rural America and the Promise of Tomorrow, delivered by Commissioner Jonathan S. Adelstein before the NTCA Annual Meeting and Expo, February 3, 2002, page 3. (“Adelstein Speech”)

²⁶ Cellular South Order, ¶28.

²⁷ The search was conducted by clicking on http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi. Then, the search fields were limited to Docket No. 96-45 and Alabama. The results produced 128 records filed between January 24, 2003 and July 20, 1998, 71 being self-titled “Universal Service Fund Complaint.” The results were then manually examined to verify accuracy, after which, it was determined that approximately 5 of the 128 records (none being the Universal Service Fund Complaints) had been improperly classified to “Alabama” and that 3 of the original 71 Universal Service Fund Complaints had been improperly filed multiple times.

²⁸ See, for example, Comment of Michael Werner, CC Docket No. 96-45, filed November 1, 2002. All of the complaints are apparently pre-drafted with the opportunity for the author to add personal comments. The phrase quoted above is a part of all of the complaints.

best to keep costs fair and equitable.”³⁰ Clearly, these citizens and customers of wireless carriers, and likely many more throughout Alabama and America, believe that the size of the universal service fund, and the burden it places on contributors, *is* within the public interest. This Commission should reconsider the public interest declarations by the Bureau and provide Mr. Grimes and all other citizens the assurance that costs will be fair and equitable.

III. Conclusion

Competition, especially when it provides incorrect economic signals, is not always in the public interest. There are other aspects, including the potential impact of competition, to consider. Continuing to weaken or ignore the Congressionally mandated requirements for access to universal service support mechanisms is clearly not in the public interest and jeopardizes the very existence of the funds. Accordingly, the FCC should suspend the ETC designations until the Joint Board has made its recommendation and the full record may be considered.

Respectfully submitted,

[electronically filed]
TCA, Inc.-Telcom Consulting Associates
1465 Kelly Johnson Blvd., Suite 200
Colorado Springs, CO 80920
(719) 266-4334

February 10, 2003

²⁹ See Comment of Lisa Beaman, CC Docket No. 96-45, filed November 1, 2002.

³⁰ See Comment of James Grimes, CC Docket No. 96-45, filed November 1, 2002.